

P BK 94 PG 103

STATE MS - DESOTO CO.
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BK 94 PG 103
W.E. DAVID SR. CLK.

Prepared by and When Recorded Return To:

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Bodman, Longley & Dahling LLP
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Detroit, Michigan 48243
(313) 259-7777

Indexing Instructions:

**PART OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 2 SOUTH,
RANGE 9 WEST, DESOTO COUNTY, MISSISSIPPI**

LANDLORD'S ACKNOWLEDGMENT AND CONSENT

This Landlord's Acknowledgment and Consent ("Consent") is made as of the 1st day of April, 2002, by and between THE VILLAGE OF MEMPHIS, MISSISSIPPI, a municipal corporation ("Landlord"), whose address is Post Office Box 188, Village of Memphis, Mississippi, 38671, and COMERICA BANK-CALIFORNIA, a California banking corporation ("Bank"), whose address is 633 W. 5th Street, 69th Floor, Los Angeles, California 90071.

W I T N E S S E T H :

WHEREAS, Landlord is the lessor under that certain Amended and Restated Project Site Lease dated as of April 1, 2002 by and between Landlord, as lessor, and BOMAINE CORPORATION, a California corporation ("Tenant"), as lessee, a copy of which is attached as Exhibit A hereto (the "Lease") with respect to certain land, property and premises described on Exhibit B attached hereto (the "Leased Premises");

WHEREAS, Landlord is advised that Tenant has or will grant to Bank a leasehold deed of trust ("Deed of Trust") encumbering or transferring, among other property, Tenant's interest under the Lease, to secure loans and other extensions of credit by Bank to Tenant; and

WHEREAS, as a condition to extending loans or other credit to Tenant, Bank requires that Landlord enter into this Consent;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Landlord has received a copy of the Deed of Trust and hereby consents to the Deed of Trust and encumbrance and/or transfer thereunder. Landlord acknowledges and agrees that the Deed of Trust encumbers and/or transfers all of Tenant's rights, benefits and privileges under the Lease, including without limitation, the option to purchase under Section 18 thereof.

2. Landlord certifies that: (a) it has good and indefeasible title to all of the Leased Premises with the full power and authority to lease the Leased Premises to Tenant under the Lease; (b) the Lease is valid and in full force and effect in accordance with its terms; (c) the attached Lease is a full and complete copy of the Lease and has not been surrendered, terminated, canceled, modified, changed, supplemented, altered or amended; and (d) no default, offset, counterclaim or defense in favor of either party to the Lease exists or is outstanding.

3. Landlord agrees to give Bank written notice of any default by Tenant under the Lease. Notice as aforesaid (and any other notices required to be given to Bank under this Consent), shall be in writing and shall be sent by certified mail to Bank at the following address: Comerica Bank-California, 633 W. 5th Street, 69th Floor, Los Angeles, California 90071, Attention: Tracie D. Plummer. The notice must clearly identify the default and state what action must be taken to cure the default. From and after such notice has been given to Bank, Bank shall have the same period for remedying the default complained of as any cure period provided to Tenant under the Lease, if any, plus the additional period provided to Bank as specified below. Landlord shall accept performance by or at the instigation of Bank as if the same had been done by Tenant. No notice of default to Tenant shall be effective under the Lease without sending a copy of such notice to Bank.

4. Notwithstanding anything to the contrary contained in the Lease, Landlord shall have no right to terminate the Lease or to avail itself of any other remedies under the Lease on account of any uncured default of Tenant unless, following expiration of any applicable cure period available to Tenant under the Lease, (a) Landlord first provides Bank with (i) if Tenant's default can be cured by the payment of money (a "Monetary Default"), not less than thirty (30) days prior notice of its intent to terminate, or (ii) if Tenant's default is of any other type (a "Non-monetary default"), not less than ninety (90) days prior notice of its intent to terminate, and (b) such default is not cured within said thirty (30) or ninety (90) day period, as applicable; provided, however, that if a Non-monetary default cannot reasonably be cured within said ninety (90) day period (or is such that possession of the Leased Premises is necessary for Bank to remedy the default), the date for termination shall be postponed and extended for such period of time as may be reasonably required to remedy such default provided that Bank in good faith makes diligent efforts to remedy such Non-Monetary default (including its acquisition of possession of the Leased Premises if necessary to cure such default). Nothing in this Section shall be construed to require Bank to commence or continue any foreclosure proceeding, and if such defaults shall be cured and the Bank shall discontinue any such foreclosure proceeding, the Lease shall continue in full force and effect as if Tenant had not defaulted under the Lease. Nothing herein shall require Bank to cure any default by Tenant under the Lease.

5. Notwithstanding any other provision of the Lease, it is agreed that Bank, or its successors, assignees, subtenants, or any purchaser at a foreclosure sale (each a "Purchaser") shall have the unrestricted right to acquire the Tenant's interest under the Lease by foreclosure, assignment or transfer in lieu of foreclosure or otherwise, and such acquisition shall not require Landlord's consent or be deemed a default under the Lease. Upon Landlord's receipt from Bank of written notice of such an acquisition sent to Landlord at the address set forth above (or to any other address given by Landlord in writing to Bank), Landlord shall permit the Purchaser to enter into possession of the Leased Premises and to hold the same and exercise and enjoy all of the rights, privileges and benefits of Tenant under the Lease, and such acquisition shall constitute an assumption by the Purchaser of Tenant's obligations under the Lease, provided, however, that the Purchaser shall not be liable for Tenant's obligations under the Lease until it shall become the owner of the Lease, either by foreclosure or assignment in lieu thereof or otherwise, and then only during the period of time it is the owner of said Lease; provided, however, that, as a condition to the right of the Purchaser to acquire the Tenant's leasehold estate as aforesaid, Purchaser shall promptly upon acquiring the leasehold estate, cure all of the defaults of the Tenant under the Lease which are outstanding as of the date of such acquisition of the leasehold estate, except for the payment of back rent or payment or performance of other obligations accruing prior to any notice of default by Landlord to Bank with respect thereto, and Non-monetary defaults which are not capable of being cured by the Purchaser, which defaults shall be deemed to be waived following the Purchaser's acquisition of Tenant's leasehold interest. Notwithstanding anything herein to the contrary, a Purchaser may sell, transfer or assign its interest in the Lease without the consent of the Landlord and free and clear of any controls or restrictions of the Landlord or under the Lease. From and after the date a Purchaser sells, transfers and/or assigns its interest in said Lease, the selling Purchaser shall have no further obligations to Landlord except for defaults that occurred during such seller's ownership of said Lease.

6. To the extent there shall exist a default at the time when any renewal option is or can be exercised under the Lease, such that the renewal would not be effective, Landlord shall provide Bank with notice of such default as required herein and the Bank may exercise such renewal on behalf of the Tenant, and Landlord shall accept such renewal, upon written notice to Landlord within thirty (30) days after receipt of such notice, provided that Bank shall cure or attempt to cure such default in accordance with the terms of this Consent; provided, further, to exercise such renewal Bank shall not be required to cure any Non-monetary default which is not capable of being cured by Bank, and such Non-monetary default shall be deemed to be waived for the purpose of exercising such renewal.

7. (a) In the event of a termination of the Lease for any reason including, without limitation, by reason of any default or the rejection or disaffirmance of the Lease pursuant to bankruptcy law or other law affecting creditors rights, Landlord shall give prompt notice thereof to Bank in writing. Landlord (or its successor, including any bankruptcy trustee) shall, on written request of Bank, made at any time within thirty (30) days after the giving of such notice by Landlord, enter into a new lease of the Leased Premises with Bank within twenty (20) days after the receipt of such request, which new lease shall be effective as of the date of such termination of the Lease and shall be for the remainder of the term of the Lease, at the rent provided for therein, and upon the same terms, covenants, conditions and agreements

as are therein contained; provided that Bank shall: (i) pay to Landlord at the time of the execution and delivery of said new lease any and all sums for rent payable by Tenant thereunder commencing from the date Landlord first notified Bank of the default and continuing to and including the date thereof, less the net amount (i.e., net of all reasonable expenses) of all sums received by Landlord from any subtenant in occupancy of any part or parts of the Leased Premises up to the date of commencement of such new lease; (ii) pay all reasonable costs resulting from the preparation and execution of such new lease; and (iii) on or prior to the execution and delivery of said new lease, agree in writing that promptly following the delivery of such new lease, Bank will perform or cause to be performed all of the other covenants and agreements contained in the Lease on Tenant's part to be performed to the extent that Tenant shall have failed to perform the same to the date of delivery of such new lease, except where such failure to perform by Tenant is, by its nature, a Non-monetary default not susceptible of cure by Bank. Nothing herein contained shall be deemed to impose any obligation on the part of Landlord to deliver physical possession of the Leased Premises to Bank unless Landlord at the time of the execution and delivery of such new lease shall have obtained physical possession thereof, but Landlord shall cooperate with Bank to obtain possession of the Leased Premises.

(b) It is the intent of the parties that any new lease made under this Section shall have the same priority with respect to any lien, charge or encumbrance on the fee of the Leased Premises as did the Lease and that the lessee under such new lease shall have the same right, title and interest in and to the Leased Premises as Tenant had under the Lease.

(c) The provisions of this Section shall survive the termination, rejection or disaffirmance of the Lease and shall continue in full force and effect thereafter to the same extent as if this Section was a separate and independent contract made by Landlord, Tenant and Bank.

8. Landlord agrees that all of Tenant's machinery, equipment, inventory, fixtures or other personal property ("Tenant's Property") which may now or hereafter be located on the Leased Premises shall remain the personal property of the Tenant and shall not become a fixture or part of the realty notwithstanding anything that may be implied by law from the mode of attachment, installation or otherwise. Landlord further agrees that any statutory, common law, contractual or possessory lien or security interest it may claim under the Lease (including any levy or distraint for rent) in Tenant's Property is hereby subordinated to any lien or security interest now or subsequently held by Bank in any of such property (and Landlord consents to any such security interest or lien) and, for so long as Bank has a security interest or lien on any of Tenant's Property, Landlord shall not assert against Tenant's Property any such security interest or lien.

9. Landlord agrees that, whether or not Bank or any Purchaser acquires Tenant's leasehold interest under Section 5 hereof, Bank shall be entitled, for a period of ninety (90) days following written notice to Landlord (provided such notice is given prior to the expiration or earlier permitted termination of the Lease) to keep the Tenant's Property on the Leased Premises and to enter upon the Leased Premises at any time or times during normal business hours to inspect or remove any of Tenant's Property, free of

any security interest, lien or other claim by Landlord. This right to keep the Tenant's Property on the Leased Premises and the right of entry and removal shall be without charge, provided, however, that after the expiration or earlier permitted termination of the Lease, Bank will pay to Landlord regular installments of rent due under the Lease for the period of time during which Bank shall elect to use or occupy the Leased Premises or elect to keep the Tenant's Property thereon without abandoning same, which rent shall be pro-rated on a per diem basis determined on a 30-day month. Bank shall be obligated to repair any physical damage directly caused to the Leased Premises by such removal and Landlord will not hinder Bank's actions in enforcing its liens and remedies with respect to Tenant's Property. Landlord agrees that Bank may conduct public and private sales of Tenant's Property at the Leased Premises and that interested parties will be permitted access to the Leased Premises during normal business hours for the purpose of inspecting Tenant's Property prior to any such sale. Bank shall not be deemed to have assumed nor shall it be liable for any unperformed or unpaid obligations of Tenant under the Lease, other than for the payment of rent described in this Section.

10. Landlord agrees that no surrender, termination, cancellation, modification, change, supplement, alteration or amendment of the Lease shall be effective until approved in writing by Bank, except for termination by Landlord in accordance with and subject to the requirements of this Consent. Landlord further agrees that any consent or approval required to be given by Tenant under the Lease shall not be effective unless Landlord first notifies Bank of the request made to Tenant for such consent or approval and Bank consents or approves in writing thereto.

11. ANYTHING IN THIS CONSENT TO THE CONTRARY NOTWITHSTANDING, (A) TENANT'S INTEREST UNDER THE LEASE HAS BEEN MORTGAGED AND PLEDGED TO BANK FOR SECURITY PURPOSES ONLY, AND, UNTIL BANK DOES SO IN A SUBSEQUENT WRITTEN UNDERTAKING, BANK ASSUMES NO DUTY, LIABILITY OR OBLIGATION WHATSOEVER UNDER THE LEASE, EITHER BY VIRTUE OF THE ENFORCEMENT OF ITS DEED OF TRUST OR OTHERWISE; AND (B) BANK SHALL HAVE NO OBLIGATION TO CURE ANY DEFAULT BY TENANT UNDER THE LEASE, OR TO CONTINUE ANY ATTEMPTED CURE, UNLESS BANK ELECTS IN WRITING TO ASSUME THE LEASE AS AFORESAID, AND THEN ONLY TO THE EXTENT PROVIDED HEREIN.

12. Any cure period available to Bank under this Consent shall automatically be extended for the time period, if any, that Bank is prohibited from exercising its rights and/or remedies against Tenant under the Deed of Trust by virtue of any injunction, restraining order or the imposition of the automatic stay arising from the commencement of bankruptcy or similar proceedings.

13. This Consent shall remain in full force and effect until Landlord is advised by the Bank in writing that all indebtedness and obligations secured by the Deed of Trust have been repaid, discharged and satisfied irrevocably in full or until the expiration or earlier termination of the Lease, whichever occurs

first, provided that any such termination is done in accordance with and subject to the notice and other provisions of this Consent.

14. Landlord agrees that in the event of any casualty or condemnation with respect to the Leased Premises, the provisions of the Deed of Trust shall govern and control the disposition of casualty and condemnation proceeds.

15. This Consent shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

16. This Consent will be governed by and construed in accordance with the laws of the State of Mississippi.

17. To the extent, if any, that this Consent is inconsistent with the Lease, this Consent shall govern and control.

18. This Consent may be executed in counterparts, each of which shall constitute an original but all of which shall together constitute one and the same Consent.

19. **LANDLORD AND THE BANK ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS CONSENT OR THE LEASE.**

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have executed and delivered this Consent as of the day and year first above written.

Attest: _____
By: [Signature]
Its: Clerk

LANDLORD:

**THE VILLAGE OF MEMPHIS,
MISSISSIPPI, a municipal corporation**

By: [Signature]
Its: Mayor

BANK:

**COMERICA BANK-CALIFORNIA, a
California banking corporation**

Attest: _____
By: _____
Its: _____

By: _____
Its: _____

Acknowledged and Agreed to by:

TENANT:

**BOMAINE CORPORATION, a California
corporation**

Attest: _____
By: _____
Its: _____

By: _____
Its: _____

IN WITNESS WHEREOF, the undersigned have executed and delivered this Consent as of the day and year first above written.

LANDLORD:

Attest:

**THE VILLAGE OF MEMPHIS,
MISSISSIPPI, a municipal corporation**

By: _____

By: _____

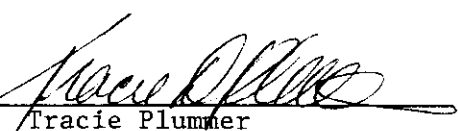
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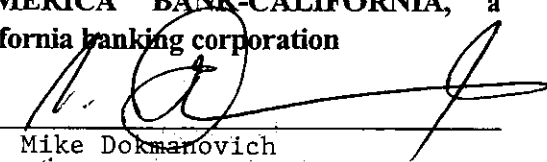
Its: _____

BANK:

Attest:

**COMERICA BANK-CALIFORNIA, a
California banking corporation**

By: 
Tracie Plummer
Assistant Vice President

By: 
Mike Dokmanovich
Senior Vice President

Its: _____

Its: _____

Acknowledged and Agreed to by:

TENANT:

Attest:

**BOMAINE CORPORATION, a California
corporation**

By: _____

By: _____

Its: _____

Its: _____

IN WITNESS WHEREOF, the undersigned have executed and delivered this Consent as of the day and year first above written.

LANDLORD:

Attest:

**THE VILLAGE OF MEMPHIS,
MISSISSIPPI, a municipal corporation**

By: _____

By: _____

Its: _____

Its: _____

BANK:

Attest:

**COMERICA BANK-CALIFORNIA, a
California banking corporation**

By: _____

By: _____

Its: _____

Its: _____

Acknowledged and Agreed to by:

TENANT:

Attest:

**BOMAINE CORPORATION, a California
corporation**

By: *[Signature]*

By: *[Signature]*

Its: *Sec*

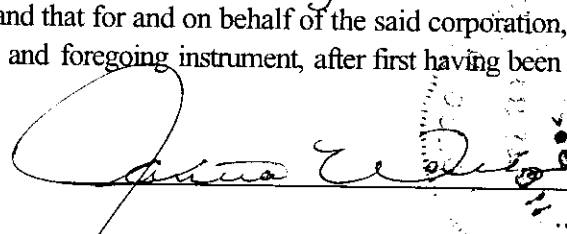
Its: *PRES*

P. BK 94 PG 112

Landlord Acknowledgment

STATE OF MISSISSIPPI)
)SS.
COUNTY OF DESOTO)

Personally appeared before me, the undersigned authority in and for the said county and state, on this 5th day of May, 2002, within my jurisdiction, the within named Robert Smith, who acknowledged that (he) (she) is the Mayor of The Village of Memphis, Mississippi, a municipal corporation, and that for and on behalf of the said corporation, and as its act and deed (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.


NOTARY PUBLIC
MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES JULY 13, 2002
SIGNED THRU STATE ALL NOTARY SERVICE

Bank Acknowledgment

STATE OF)
)SS.
COUNTY OF)

Personally appeared before me, the undersigned authority in and for the said county and state, on this ____ day of _____, 2002, within my jurisdiction, the within named _____, who acknowledged that (he) (she) is the _____ of Comerica Bank-California, a California banking corporation, and that for and on behalf of the said corporation, and as its act and deed (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

NOTARY PUBLIC
My Commission Expires: _____

Landlord Acknowledgment

STATE OF MISSISSIPPI)
)SS.
COUNTY OF DESOTO)

Personally appeared before me, the undersigned authority in and for the said county and state, on this ____ day of _____, 2002, within my jurisdiction, the within named _____, who acknowledged that (he) (she) is the _____ of The Village of Memphis, Mississippi, a municipal corporation, and that for and on behalf of the said corporation, and as its act and deed (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

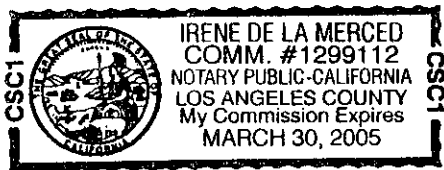
NOTARY PUBLIC

My Commission Expires: _____

Bank Acknowledgment

STATE OF **California**)
)SS.
COUNTY OF **Los Angeles**)

Personally appeared before me, the undersigned authority in and for the said county and state, on this 7th day of May, 2002, within my jurisdiction, the within named Mike Dokmanovich, who acknowledged that (he) ~~(she)~~ is the SVP/Grp Manager of Comerica Bank-California, a California banking corporation, and that for and on behalf of the said corporation, and as its act and deed (he) ~~(she)~~ executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.



Irene De La Merced

Irene De La Merced, Notary Public
NOTARY PUBLIC

My Commission Expires: March 30, 2005

Tenant Acknowledgment

STATE OF CALIFORNIA)
)SS.
COUNTY OF LOS ANGELES)

Personally appeared before me, the undersigned authority in and for the said county and state, on this 3RD day of MAY, 2002, within my jurisdiction, the within named GERALD M. BRENSTEIN, who acknowledged that (he) (~~she~~) is the PRESIDENT of Bomaine Corporation, a California corporation, and that for and on behalf of the said corporation, and as its act and deed (he) (~~she~~) executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

Kenji R. Onishi
KENJI R. ONISHI

NOTARY PUBLIC

My Commission Expires: AUG. 19, 2004

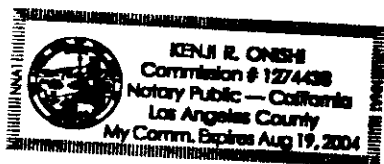


EXHIBIT A

LEASE

See attached.

P BK 94 PG 116

Prepared by:
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
Attn: Elizabeth E. Thomas, Esq.
17th Floor, AmSouth Plaza
210 East Capitol Street
Jackson, Mississippi 39201
(601) 948-5711

To the Chancery Clerk of DeSoto County, Mississippi: The real property described herein is situated in the Northwest Quarter of Section 9, Township 2 South, Range 9 West, DeSoto County, Mississippi.

AMENDED AND RESTATED PROJECT SITE LEASE

THIS AMENDED AND RESTATED PROJECT SITE LEASE (this "Amended and Restated Project Site Lease"), dated as of April 1, 2002, is entered into by and between the **VILLAGE OF MEMPHIS, MISSISSIPPI**, a municipal corporation (the "Landlord"), and **BOMAINE CORPORATION d/b/a BRENTWOOD ORIGINALS, INC.**, a California corporation qualified to do business in Mississippi (the "Tenant").

WITNESSETH:

WHEREAS, Landlord is the fee simple owner of the land described in Exhibit A attached hereto and made a part hereof (together with all rights-of-way, easements, servitudes, licenses, tenements, hereditaments and appurtenances thereunto belonging, the "Site");

WHEREAS, Landlord desires to construct certain improvements on the Site (the "Improvements");

WHEREAS, the Landlord and certain state and local supporting governmental entities and others have entered into a Memorandum of Understanding (the "Memorandum of Understanding") with the Tenant pursuant to which the parties thereto agreed to provide certain inducements to Tenant in consideration of Tenant's agreeing to construct or cause to be constructed on the Site an industrial plant for use for any lawful purpose, including manufacturing, distribution and processing (the "Facility");

WHEREAS, based upon the Landlord's willingness to lease, Tenant will expend or cause to be expended certain amounts in connection with the construction of the Facility;

WHEREAS, the Facility will contain an estimated 375,000 square feet under roof, will be utilized for the production and distribution of decorative pillows and window treatments and will be composed of buildings, improvements, machinery and equipment;

WHEREAS, the Facility will be constructed so as to permit its expansion as necessary to satisfy increased business opportunities;

WHEREAS, in addition to the rent payable by the Tenant hereunder, the Landlord recognizes that the Landlord and the State will receive additional consideration from the location of the Facility within the State by the promotion of industry, the development of trade, the increase of tax revenue and the increase of employment opportunities both directly by Tenant as well as by the potential establishment of other entities within the State to provide support or services to the Tenant and other indirect benefits;

WHEREAS, Landlord and Tenant agreed on the terms and conditions for the leasing of the Site and entered into the Project Site Lease, dated as of September 2001 (the "Original Project Site Lease" and together with the Amended and Restated Project Site Lease, the "Project Site Lease") pursuant to which the Landlord agreed to lease the Site to the Tenant; and

WHEREAS, to further accomplish the purpose of the Memorandum of Understanding and record the Project Site Lease in the real estate records of DeSoto County, Mississippi; the Landlord and the Tenant desire to amend the Original Project Site Lease.

P. BK 94 PG 117

limited to hazard, fire, liability and worker's compensation insurance.

7. **Compliance with Laws and Ordinances.** Tenant, at its expense, will comply with all material federal, state, county and city laws, ordinances and regulations of any duly constituted authority affecting the Site.
8. **Landlord's Access to Site.** Landlord will have access to the Site, at its own risk and expense, at any reasonable times after obtaining permission from Tenant, which permission shall not be unreasonably withheld or delayed, during the term of this Project Site Lease for the purpose of examining and inspecting same and subject to Tenant's designation of certain areas as private due to the nature of the activities conducted therein.
9. **Assignment and Subletting.** Tenant shall have the right and power, at any time and from time to time, to assign or sublease the Project Site Lease with the consent of the Landlord, which consent shall not be unreasonably withheld; such person(s) and/or entity(ies) that has the consent of the Landlord shall be known as "**Permitted Assignees**" under this Project Site Lease.
10. **Performance by Assignees, Subtenants and Occupancy Tenants.** Landlord shall accept performance by any transferee (be it an assignee, subtenant or occupant) of any of the terms and provisions of this Project Site Lease required to be performed by Tenant with the same force and effect as though performed by Tenant and such transferee shall be deemed to be the Tenant for all purposes of this Project Site Lease. For the purposes of this Section 10, the term "transferee" shall be deemed to include any purchaser at foreclosure or party acquiring in lieu of foreclosure.
11. **Casualty.** If the Site, the Facility or any part thereof, suffers a casualty, Tenant's obligations under this Project Site Lease shall be abated pending the restoration of the Site to the point that the Site is fully operational.
12. **Events of Default.** Landlord and Tenant agree that the following shall be considered an "Event of Default":
 - (a) The Tenant shall be considered in default if the Tenant has not performed relative to its private capital investment in the new building and the retention of jobs in the Village of Memphis as set out in the Memorandum of Understanding five (5) years from the commencement date of this Project Site Lease; or
 - (b) Notwithstanding anything to the contrary contained herein, the Landlord's rights and remedies and Tenant's obligations and liabilities are subject to Section 20 of this Project Site Lease.
13. **Tenant's Right to Facility.** Notwithstanding anything in this Project Site Lease to the contrary, the Facility will remain the property of Tenant or Permitted Assignees, free from any lien, claim or interest of Landlord, and such Permitted Assignees will be given a reasonable opportunity to remove the Facility and any portion thereof after default.
14. **Tenants Right to Mortgage.** Tenant may at any time from time to time (and as many times as they desire) mortgage, hypothecate or pledge its interests in and to this Project Site Lease, the Site and the Facility, together with its right, title and interest in any and all subleases, including, but not limited to, the Project Site Lease, and in and to rents due or to become due thereunder, either individually or any combination thereof, pursuant to a mortgage, deed of trust, security agreement, assignment, capital lease, sale/leaseback, financing statement or other instrument or financing device (herein called a "Leasehold

P. BK 94 PG 118

Mortgage"; and the holder of any such Leasehold Mortgage, whether or not the same is recorded of record, is herein called a "Leasehold Mortgagee").

- (a) In the event a Leasehold Mortgagee or its nominee designated for that purpose acquires the leasehold estate pursuant to any proceedings for foreclosure of such Leasehold Mortgage, or by a voluntary assignment or transfer of this Project Site Lease or any sublease and the leasehold estate in lieu of foreclosure or otherwise, the Leasehold Mortgagee or its nominee or assignee as aforesaid shall be deemed an assignee of all the rights of Tenant under this Project Site Lease or of all the rights of any subtenant, as the case may be.
- (b) If this Project Site Lease shall be rejected or disaffirmed pursuant to any bankruptcy law or other law affecting creditors' rights or if this Project Site Lease is terminated for any other reason whatsoever, Landlord will enter into a new lease of the Site with the Leasehold Mortgagee or its nominee not less than ten (10) nor more than thirty (30) days after the request of the Leasehold Mortgagee referred to below, for the remainder of the term of this Project Site Lease effective as of the date of such rejection or disaffirmance or termination, upon all the terms and provisions contained in this Project Site Lease; provided that (i) the Leasehold Mortgagee makes a written request to Landlord for such new Project Site Lease within ninety (90) days after the effective date of such rejection or disaffirmance or termination, as the case may be, and such written request is accompanied by a copy of such new lease, duly executed and acknowledged by the Leasehold Mortgagee or its nominee and (ii) upon taking possession of the Site the Leasehold Mortgagee cures any outstanding defaults within the period reasonably required to cure the same. Any new lease made pursuant to this paragraph shall have the same priority with respect to other interests in the Site as this Project Site Lease. The provisions of this paragraph shall survive the rejection or disaffirmance or termination of this Project Site Lease and shall continue in full force and effect thereafter to the same extent as if this paragraph were a separate and independent contract made by Landlord and the Leasehold Mortgagee.
- (c) So long as a Leasehold Mortgage is in effect (i) Landlord will not accept a voluntary surrender of this Project Site Lease, (ii) the Project Site Lease shall not be modified in any material respect without, in each case, the prior written consent of the Leasehold Mortgagee and (iii) Landlord waives any statutory or other lien which Landlord may have in the Site or the Project in favor of a Leasehold Mortgagee. Any violation of this paragraph shall be void.

Landlord shall execute any instruments any such Leasehold Mortgagee may reasonably request or require from Landlord, with respect to the provisions of this Section 14.

- 15. **Right to Mortgage or Sell.** Landlord shall not have the right to place a mortgage or other lien on the Landlord's interest in the Site or this Project Site Lease or sell the same or pledge or encumber its rights to any revenues pertaining to the Site at any time during the term of this Project Site Lease without the prior written consent of Tenant. If Landlord violates the provisions of this Section 15, such sale, mortgage, pledge, lien or other encumbrance shall be deemed null and void.
- 16. **Landlord's and Tenant's Certificates.** Landlord and Tenant, on written request from each other, shall execute and deliver to the other party, or any Leasehold Mortgagee if so requested, without charge, a certificate certifying whether this Project Site Lease is in full force and effect, and whether it has been modified (or if there have been modifications, stating them), and whether the party executing the certificate knows of any default, breach

P BK94 PG119

or violation by the other party under any of the terms of this Project Site Lease, and such other matters as may reasonably be requested.

17. **Quiet Enjoyment.** Landlord agrees that, so long as no Event of Default exists under the terms of this Project Site Lease, Tenant's quiet and peaceful enjoyment of the Site shall not be disturbed or interfered with by Landlord, or by any person or party claiming by, through or under Landlord. Landlord further agrees to regulate or to cause the appropriate entity or agency to regulate drilling, mining or other means of exploration, development and production of oil, gas and other minerals in such a manner that the surface of the Site remains undisturbed and any subsurface activity is conducted in a manner that the bearing capacity and integrity of the subsurface remains the same as of the date of completion of site preparation by Tenant.
18. **Option to Purchase.** Landlord grants to Tenant the irrevocable option to purchase the Site at any time after the Tenant has performed its obligation relative to its private capital investment in the new building and the retention of jobs in the Village of Memphis as set out in the Memorandum of Understanding. The purchase price shall be ten dollars (\$10.00). Upon receipt of notice and payment, Landlord shall convey the Site to Tenant, free of the rights of any party other than Tenant or anyone claiming by, through or under Tenant, and subject only to those items of public record as of the Commencement Date, ad valorem taxes payable by Tenant, and easements for public utilities serving the Site.
19. **Recording of Project Site Lease.** Upon the execution hereof, Tenant may record this Project Site Lease or a memorandum hereof (which Landlord agrees to execute) in the office of the Chancery Clerk of DeSoto County, Mississippi.
20. **Inability to Perform.** Anything in this Project Site Lease to the contrary notwithstanding, Tenant's inability to fulfill any of Tenant's agreements and undertakings under this Project Site Lease shall not be considered an Event of Default if Tenant is prevented or delayed from so doing by reason of strikes, labor troubles, lockouts, riots, civil commotions, acts of God, governmental restrictions, unavailability of services or materials, national economy or any other cause beyond the reasonable control of Tenant.
21. **Notices.** All notices to or demands upon Landlord or Tenant desired or required to be given under the provisions hereof shall be in writing and shall be deemed to have been duly given upon the earlier of actual receipt or, if mailed, three days after being deposited in the United States mail, registered or certified, return receipt requested, postage prepaid and addressed as follows:

If to Landlord: Village of Memphis
Attention: Mayor
Post Office Box 188
Village of Memphis, Mississippi 38671

If to Tenant: Bormaine Corporation
Attention: Kenji Onishi
4551 Glencoe Avenue
Marina Del Rey, California 90292

or at such other address within the continental United States as any party may notify the other party as herein specified.

0. BK 94 PG 120

22. **Liability of Tenant.** Anything in this Project Site Lease to the contrary notwithstanding, Landlord acknowledges and agrees that each of the covenants, undertakings and agreements herein made on the part of Tenant, while in form purporting to be covenants, undertakings, and agreements of Tenant, are, nevertheless, made and intended not as personal covenants, undertakings and agreements by Tenant, or for the purpose of binding Tenant or its assets personally, but are made and intended for the purpose of binding only Tenant's interest in the Site; and that no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against Tenant, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any liability or claim under or in connection with this Project Site Lease from any source other than the Tenant's interest in the Site, it being agreed that no personal liability of Tenant is created hereunder and any such personal liability of Tenant is hereby waived.
23. **Miscellaneous.**
- (a) All agreements, terms, provisions and conditions in this Project Site Lease shall extend and inure to the benefit of, and be binding upon, the authorized successors and assigns of the parties hereto.
 - (b) The captions of this Project Site Lease are for convenience only, and are not to be construed as a part of this Project Site Lease, and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.
 - (c) If any term or provision of this Project Site Lease shall be to any extent held invalid or unenforceable, the remaining terms and provisions of this Project Site Lease shall not be affected thereby, but each term and provision of this Project Site Lease shall be valid and be enforced to the fullest extent permitted by law; provided, that notwithstanding any finding of invalidity with respect to any portion of this Project Site Lease, the Tenant may exercise its option to purchase the Site as provided in Section 18.
 - (d) This Project Site Lease shall be construed and enforced in accordance with the laws of the State of Mississippi.
 - (e) This Project Site Lease represents the entire agreement between the parties hereto and supersedes all prior negotiations, representations or agreements; provided, this Project Site Lease does not supersede or replace the Memorandum of Understanding, the terms of which Memorandum of Understanding are in addition to the provisions of this Project Site Lease, and the terms of which, to the extent of any conflict, shall prevail. No provision contained herein abrogates or lessens any obligation of Tenant under the Memorandum of Understanding or any amendments thereto.
 - (f) This Project Site Lease may be executed in multiple counterparts or in counterpart originals, each of which taken together shall constitute one and the same instrument.
 - (g) Nothing herein contained shall be deemed or constructed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that no provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship other than Landlord and Tenant.
 - (h) Any waiver given by either party with respect to performance by the other party of any provision of this Project Site Lease shall be construed only as a waiver of the

P BK 94 PG 121

particular provision in question and only then with respect to the particular failure to comply, and such waiver shall not be construed as a waiver of any separate failure to comply or of any other provisions of this Project Site Lease.

- (i) Whenever herein the singular number is used, the same shall include the plural and words of any gender shall include each other gender.
- (j) The individuals executing this instrument on behalf of Landlord and Tenant, respectively, represent that each has been duly authorized so to do by appropriate action taken by Landlord or Tenant, as the case may be.

(This space left intentionally blank.)

P. BK 94 PG 122

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Project Site Lease as of the date first above written with actual execution on the dates set forth in the respective acknowledgments below.

Landlord:

VILLAGE OF MEMPHIS, MISSISSIPPI

By:

, Mayor

Attest:

By:


Clerk

SEAL

Tenant:

BOMAINE CORPORATION

By:


Jack Damer, President - Southern Division

P. BK 94 PG 123LANDLORD ACKNOWLEDGMENT**STATE OF MISSISSIPPI
COUNTY OF DESOTO**

Personally appeared before me, the undersigned authority in and for the said county and state, on this 7th day of April, 2002, within my jurisdiction, the within named Robert E. Smith and Santa Walls, duly identified before me, who acknowledged that they are the Mayor and City Clerk, respectively, of the Village of Memphis, Mississippi and that for and on behalf of said Village, and as its act and deed, they executed and sealed the above and foregoing instrument, after first having been duly authorized so to do.

**NOTARY PUBLIC**

My Commission Expires:

Notary Public State of Mississippi At Large
My Commission Expires July 17, 2002
(Atty. Official Seal)
Bureau of the Notary, Brooks & Garland, Inc.

P BK 94 PG 124TENANT ACKNOWLEDGMENTSTATE OF MISSISSIPPI
COUNTY OF DeSoto

Personally appeared before me, the undersigned authority in and for the said county and state, on this 7th day of April, 2002, within my jurisdiction, the within named Jack Damer, duly identified before me, who acknowledged that he is President of Bormaine Corporation, and that for and on behalf of said corporation, and as its act and deed, they executed the above and foregoing instrument, after first having been duly authorized so to do.


NOTARY PUBLICMy Commission Expires: 4/10/04
(Affix official seal)

P. BK 94 PG 125**EXHIBIT A****PROPERTY DESCRIPTION**

44.077 ACRES OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 2 SOUTH, RANGE 9 WEST, DESOTO COUNTY, MISSISSIPPI, DESCRIBED AS FOLLOWS:

Commerce at a spike set at the Northwest Corner of said Section 9; thence, run South 87 degrees 42 minutes 02 seconds East, 1303.69 feet to a 1/2" iron rod set on the south 53 foot right-of-way line of Church Road and the POINT OF BEGINNING; thence, continue along said right-of-way line, South 89 degrees 53 minutes 37 seconds East, 800.00 feet to a 1/2" iron rod set; thence, leaving said right-of-way line, run South 00 degrees 06 minutes 23 seconds West, 2400.00 feet to a 1/2" iron rod set; thence, North 89 degrees 53 minutes 37 seconds West, 800.00 feet to a 1/2" iron rod set; thence, North 00 degrees 06 minutes 23 seconds East, 2400.00 feet to the POINT OF BEGINNING.

EXHIBIT B

DESCRIPTION OF REAL ESTATE

44.077 ACRES OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 2 SOUTH, RANGE 9 WEST, DESOTO COUNTY, MISSISSIPPI, DESCRIBED AS FOLLOWS:

Commence at a spike set at the Northwest Corner of said Section 9; thence, run South 87 degrees 42 minutes 02 seconds East, 1303.69 feet to a 1/2" iron rod set on the south 53 foot right-of-way line of Church Road and the POINT OF BEGINNING; thence, continue along said right-of-way line, South 89 degrees 53 minutes 37 seconds East, 800.00 feet to a 1/2" iron rod set; thence, leaving said right-of-way line, run South 00 degrees 06 minutes 23 seconds West, 2400.00 feet to a 1/2" iron rod set; thence, North 89 degrees 53 minutes 37 seconds West, 800.00 feet to a 1/2" iron rod set; thence, North 00 degrees 06 minutes 23 seconds East, 2400.00 feet to the POINT OF BEGINNING.